

James Madison to Edmund Pendleton, January 8, 1782. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.

TO EDMUND PENDLETON.¹

1 From the Madison Papers (1840).

Philadelphia, January 8, 1782.

Dear Sir, —Yesterday was opened, for the first time, the Bank instituted under the auspices of Congress. Its principal founder is Mr. Robert Morris, who has certain prerogatives with respect to it in his quality of Superintendent of Finance. It is pretty analogous in its principles to the Bank of England. The stock subscribed is 400,000 dollars. When the scheme was originally proposed to Congress for their approbation and patronage, a promise was given that as soon as it was ripe for operation the company should be incorporated. A few days ago the fulfilment of the promise was claimed. The competency of Congress to such an act had been called in question in the first instance; but the subject not lying in so near and distinct a view, the objections did not prevail. On the last occasion, the general opinion, though with some exceptions,

was, that the Confederation gave no such power, and that the exercise of it would not bear the test of a forensic disquisition, and consequently would not avail the Institution. The Bank, however, supposing that such a sanction from Congress would at least give it a dignity and preeminence in the public opinion, urged the engagement of Congress; that on this engagement the subscriptions had been made, and that a disappointment would

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leave the subscribers free to withdraw their names. These considerations were re-inforced by the Superintendent of Finance, who relied on this Institution as a great auxiliary to his department; and, in particular, expected aid from it in a payment he is exerting himself to make to the army. The immediate interposition of Congress was rendered the more essential, too, by the sudden adjournment of the Assembly of this State, to whom the Bank might have been referred for the desired incorporation, which, it was the opinion of many, would have given them a sufficient legal existence in every State. You will conceive the dilemma in which these circumstances placed the members who felt on one side the importance of the Institution, and on the other a want of power, and an aversion to assume it. Something like a middle way finally produced an acquiescing, rather than an affirmative, vote. A charter of incorporation was granted, with a recommendation to the States to give it all the necessary validity within their respective jurisdictions. As this is a tacit admission of a defect of power, I hope it will be an antidote against the poisonous tendency of precedents of usurpation.

In the ordinance lately passed for regulating captures, which I presume you have seen, a clause was inserted exposing to capture all merchandizes produced in Great Britain, if coming into these States, and within three leagues of the coast, although the property of a neutral nation. Congress have now recommended to the States to subject them to seizure, during the war, if found on land within their respective limits. These measures had become necessary to check an evil

which was every day increasing, and which both enabled and encouraged Great Britain to persevere in the war, at the same time that it mortified our ally with daily seeing the fruits of his generosity to us remitted in payment to the rival of his nation and the enemy of both.